

GC/JT:bhs
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FROM: Assistant General Counsel
Timothy P. McCollum

SUBJECT: [] Request for Bylaw Amendment
(Your February 24, 1988, Memorandum)

DATE: March 24, 1988

The decision as to whether to grant [] the requested bylaw amendment is a policy decision on which we will defer to your judgment. There is no legal precedent or requirement that the amendment be either approved or disapproved.

[] has requested the following amendment to Article X, Section 1 of the Corporate Federal Credit Union Bylaws:

Loans and lines of credit may be extended to members in accordance with applicable law. Loans or lines of credit to a member, other than a member credit union, shall not be in excess of its shareholdings in this credit union unless otherwise authorized by applicable law, or unless the loan is made jointly to one or more member credit unions and a business organization in which they have majority interest, or if the non-credit union member is an association the loan is made jointly to a majority of the members of the association and to the association in its own right. (Proposed language is underlined).

[] justification for the proposed amendment is that it would eliminate unnecessary collateralization requirements involved with non-credit union borrowing. In support of its request for the amendment [] notes that a similar standard bylaw amendment to Article XII, Section 1 of the FCU Bylaws has been approved by NCUA for non-corporate FCU'S.

Article XII, Section 1 of the FCU Bylaws states that "[I]oans to a member other than a natural person shall not be in excess of its shareholdings in this credit union." In conjunction with the issuance of the member business loan regulation [Section 701.21(h) of NCUA's Rules and Regulations], the Board approved a standard bylaw amendment to this section which states:

. . . Loans to a member other than a natural person shall not be in excess of its shareholdings in this credit union, unless the loan is made jointly to one or more natural person members and a business organization in which they have majority interest, or if the nonnatural person is an association the loan is made jointly to a majority of the members of the association and to the association in its own right.

The rationale for Article XII, Section 1 of the FCU Bylaws was to prevent nonnatural persons from being a drain on an FCU's liquidity to the detriment of natural person members. (See 51 Fed. Reg. 23234, 23238, June 26, 1986). Similarly, the limitation in Article X, Section 1 of the Corporate FCU Bylaws prevents loans to members other than credit unions from being a drain on the corporate's liquidity.

In drafting the member business loan regulation, it was originally proposed that a federally-insured credit union would not be permitted to make a member business loan to a nonnatural person in excess of its shares at the credit union. Due to the concern that this provision would keep the nonnatural person (e.g., corporation, business, etc.) from being directly involved in the loan transaction and signing the loan documents, despite the fact that it was the beneficiary of the loan proceeds, the provision was deleted from the final rule. [See 51 Fed. Reg. at 23238.] Instead, the Board approved the standard bylaw amendment to Article XII, Section 1 which lessens the restrictions on loans to nonnatural persons but also contains safeguards on liquidity by requiring certain natural persons to be obligated on the loan in addition to the nonnatural party.

The rationale for approving the standard bylaw amendment does not provide a basis for approving the amendment

requested by []. There is no concern that credit union members of a corporate credit union would take out loans on behalf of non-credit union members. [] corporate's request can be distinguished from the standard bylaw amendment on this basis.

From a legal standpoint, you may either grant or deny the request. There is no precedent that would require you to act in a certain manner. The issue is really one of policy. You indicated in your letter that you would like to deny the request on the basis that the amendment does not benefit member credit unions. Since the primary purpose of a corporate credit union is to serve natural person credit unions, we have no problem with this position. The other Regional Offices should of course, per the delegation of authority on the approval/disapproval of nonstandard bylaw amendments, be consulted on the policy issues presented by this request.

Lastly, the January 21, 1988, letter from [] to you appears to state that the standard bylaw amendment to Article XII, Section 1 of the FCU Bylaws applies both to natural person FCU's and corporate FCU's. It should be clarified to [] that this standard bylaw amendment applies only to natural person FCU' s.